

NOTICE

On August 22, 2003 the Commissioner filed amendments to N.J.A.C. 6A:10-1.2, 3.1, 4.2 and 4.7. These amendments have been incorporated into N.J.A.C. 6A:10. See www.nj.gov/njded/code to view the entire chapter. N.J.A.C. 6A:10, as amended, supercedes N.J.A.C. 6A:24 to the extent inconsistent with the regulations herein.

Full text of the adopted amendments follows:

6A:10-1.2 Definitions

As used in this chapter, unless the context clearly indicates otherwise, the following words shall have these meanings:

"Abbott district" means one of the following 28 urban districts in district factor group A and B specifically identified in the appendix to *Raymond Abbott, et al. v. Fred G. Burke, et al.* decided by the New Jersey Supreme Court on June 5, 1990 (119 N.J. 287, 394) as follows: Asbury Park City, Bridgeton City, Burlington City, Camden City, East Orange City, Elizabeth City, Garfield City, Gloucester City, Harrison Town, Hoboken City, Irvington Township, Jersey City, Keansburg Borough, Long Branch City, Millville City, New Brunswick City, Newark City, City of Orange Township, Passaic City, Paterson City, Pemberto[w]n Township, Perth Amboy City, Phillipsburg Town, Pleasantville City, Trenton City, Union City, Vineland City, and West New York Town, and the following districts not included above but designated Abbott districts pursuant to P.L. 1999, c.110, Neptune Township and Plainfield, and such other districts as may qualify in the future. Abbott district shall not include a charter school located within any of these districts.

“Actual 2002-2003 expenditure” means, for the 2003-2004 school year, a cash or accrued expense in the 2002-2003 school year for goods and/or services received in the 2002-2003 school year.

"Additional supplemental funding" means, for the 2003-2004 school year, the discretionary funding awarded by the Commissioner to maintain the instructional program[s, services and positions from] approved and provided in 2002-03 [that the Commissioner determines to continue to be essential to the provision of a thorough and efficient education in those districts].

...

“Demonstrated Need” means a documented finding by a school that some or all students will be unable to master the CCCS unless a particular program, service, position, or combination is provided and that the connection between the proposed remedy and improved student achievement is also documented.

...

“Instructional Program” means, for the 2003-2004 school year, programs, services and positions that are school based and are directly serving students in the attainment of the core curriculum content standards.

“Maintenance budget” means, for the 2003-2004 school year, a budget funded at a level such that the district can implement 2002-2003 approved and provided programs, services, and positions and includes documented increases in non-discretionary expenditures and adjustments for actual 2002-2003 expenditures. Examples of non-discretionary expenditures are increases in

contracted salaries, health benefits, and special education tuition. Maintenance does not include the restoration of programs, positions, or services that were provided in previous years or new programs, positions, or services unless necessary to meet Paragraph 2c of the Supreme Court's order of June 24, 2003 in Abbott v. Burke. Maintenance also does not include non-recurring 2002-2003 expenditures.

...

"Non-instructional program" means, for the 2003-2004 school year, office/administrative expenditures and programs, positions, services and/or expenditures that are not school based or that are not directly serving students in the attainment of the core curriculum content standards.

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SUBCHAPTER 3. DISTRICT REQUEST FOR ADDITIONAL SUPPLEMENTAL FUNDING

6A:10-3.1 Application for additional supplemental funding for the 2003-2004 school year

(a) – (b) (No Change)

(c) The Department shall review the district-wide budget to determine if all available resources, reallocations and other factors have been incorporated and that the budget is a maintenance budget that contains only those programs, positions and services approved and provided in 2002-2003. The Department shall review [comparative school-level expenditure analyses between schools and across districts in conjunction with reviewing student achievement data to assess the effectiveness and efficiency of expenditures. In making the determination as to whether an

existing program, service or expenditure should be exempt from reallocation, in whole or part, the Department shall consider whether] the maintenance budget to ensure that all non-instructional expenditures are effective and efficient.

1. The effectiveness and efficiency of non-instructional expenditures in the 2002-2003 budget shall be determined by:

- i. A comparative analysis of non-instructional expenditures to those of other school districts and/or historical spending patterns in the district.
- ii. An analysis of staffing needs including but not limited to comparative data of ratios of non-instructional/ administrative staff to instructional staff as well as district-specific information regarding staffing needs.
- iii. A review of non-instructional programs to identify expenditures that are included that may be funded through other funding sources or that alternative funding is not available because the expenditure is not essential to the provision of a thorough and efficient education. Such expenditures include, but are not limited to, capital costs that could be funded pursuant to the Education Facilities Construction and Financing Act or that exceed the facilities efficiencies standards established pursuant to that Act.
- iv. Cost savings and/or inefficiencies identified or proposed by the district or by the State Auditor or Office of Legislative Services audit.

2. If a non-instructional program is determined to be ineffective and/or inefficient, a corresponding reduction shall be made to the district's budget.

[1. The existing program, service or other expenditure is school-based and directly serving the students in the school;

2. The existing program, service or other expenditure has demonstrated measurable results in enhancing student achievement;
3. Elimination of the existing program, service or other expenditure would undermine the foundational education program of the school;
4. The existing program, service or other expenditure is being delivered in the most efficient possible manner.]

(d) The Commissioner shall review applications for additional supplemental funding and make a determination based on:

1. – 2. (No Change)

3. Documentation by the district, confirmed by the Commissioner, that the additional funds sought cannot be achieved by:

i. Reallocating from non-instructional [expenditures, programs no longer] programs that are determined not to be effective or efficient [in the realization of the educational remedies set forth by the Court, or other discretionary components funded by State and local revenues, which can be delayed or eliminated]; or

ii. (No Change)

4. Evidence by the district that an essential program or service [is unable to] cannot be funded through reallocation and that without additional supplemental funding the core instructional programs will be negatively affected. The core instructional program for the

school year will be the instructional program[s, services and essential positions] approved and provided in the 2002-2003 school year [that continue to be essential to the achievement of a thorough and efficient education] and shall include any documented increase in non-discretionary expenditures including, but not limited to, contracted salary increases, increases in health benefits, and increases in special education tuition.

5. (No Change)

6. The Department shall, by August 22, 2003, issue a preliminary estimate of supplemental funding needed to support a maintenance budget as reduced for ineffective and/or inefficient non-instructional programs for 2003-2004. This amount is subject to adjustment as provided in the Appropriations Act.

(e) If the Commissioner determines that a non-instructional program is ineffective and/or inefficient and makes a corresponding expenditure reduction in the district budget, these monies shall be made available to a district if it can identify an unmet demonstrated need for a program or service. A district may apply for these funds once any appeal by that district as to reductions in the 2003-2004 school budget for ineffective and/or inefficient non-instructional programs has been decided by the Commissioner or otherwise resolved.

1. An application for such funds must include evidence that:

i. the program, position or service being requested will have a direct effect on the academic success of the students identified as needing the program and evidence in support of this must be attached to the application;

- ii. the program, position or service is not redundant or duplicative of other programs, positions or services available at that school and the application must attach an inventory of existing programs, positions and services at that school;
- iii. the program, service or position is school based and directly serving students;
- iv. the identified need is a result of an appropriate assessment of the instructional needs of all or some students in that school and the application must attach that needs assessment;
- v. there is no possible way to organize or redirect existing programs, services, positions or other resources to serve the instructional needs identified;
- vii. the program, position or service being requested has been demonstrated effective in meeting the identified need of similar students and the evidence of this demonstration must be attached to the application;
- viii. the program, service or position is either in place or can be implemented in an effective manner during the 2003-2004 school year.

2. If the Commissioner determines that the district has met the standard set forth above to demonstrate a need for a program, position or service and the funds are available, he may award the funds to the district for the provision of that program. Any such funds shall be kept in a restricted account and may only be used for the program or service approved under this subsection. Any funds not expended during the 2003-2004 school year shall be returned to the State.

Agency Note: Recodify existing N.J.A.C. 6A:10-3.1(e) and (f) as (g) and (h) respectively - (No Change in Text)

SUBCHAPTER 4. APPEALS

6A:24-4.2 Filing, service and documentation of petition

(a) Any appeal filed pursuant to this subchapter shall, except as noted in (a)1 and 2 below, meet the filing, service and format requirements for petitions of appeal as set forth in N.J.A.C. 6A:3 and shall generally proceed as a contested case except as noted in this subchapter. Service of the petition is required on the Attorney General of the State of New Jersey, and should be directed to Department of Law and Public Safety, Division of Law, P.O. Box 112, Trenton, New Jersey 08625-0112; Attention: Education Section.

1. Any appeal of a determination made pursuant to N.J.A.C. 6A:10-3.1(c) shall be governed by N.J.A.C. 6A:10-4.7.

[1.] 2 Any other appeal filed pursuant to this subchapter shall be filed within 30 days of the date of the decision which is the subject of the requested contested case hearing.

(b) – (c) (No Change)

6A:10-4.7 Appeals of Decision Rendered Pursuant to N.J.A.C. 6A:10-3.1(c)

(a) Reductions to the maintenance budget made pursuant to N.J.A.C. 6A:10-3.1 (c) may be appealed to the Commissioner as follows:

1. If the district has a pending appeal of the 2003-2004 budget at the Office of Administrative Law, the district shall contact the assigned Administrative Law Judge within 1 business day of receipt of the notice of the preliminary estimate of supplemental funding needed to support a maintenance budget (as reduced for ineffective and/or

inefficient non-instructional programs) for 2003-2004 to seek a pre-hearing conference in which the issues on appeal can be identified.

2. If the district does not have a pending appeal of the 2003-2004 budget at the Office of Administrative Law, the district shall file with the Commissioner, the Office of Administrative Law, Attention Chief Administrative Law Judge and the Attorney General, Attention Education Section, a letter within 7 days of receipt of the notice of the preliminary estimate of supplemental funding needed to support a maintenance budget (as reduced for ineffective and/or inefficient non-instructional programs) for 2003-2004 that specifically identifies the issues of appeal and seeks a pre-hearing conference. No answer shall be filed to this letter of appeal.

3. In the appeals, the DOE shall bear the burden of moving forward to establish the basis for any proposed reductions to the district's maintenance budget based on the effective and efficient standard set forth in N.J.A.C. 6A:10-3.1(c). If that initial burden is met, the district shall bear the burden of demonstrating that any budgetary reductions are not justified under that standard.